IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WP(C).No. 30295 of 2003(F)

PETITIONER:

MANAGING DIRECTOR, KERALA STATE
CO-OPERATIVE RUBBER, MARKETING FEDERATION LTD.
(RUBBERMARK) KOCHI-20.

BY ADV. SRI.M.A.ABDUL HAKHIM
SRI.JAGAN GEORGE

RESPONDENTS:
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1. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
IDUKKI.

2. V.M.THOMAS, VADAKKEDATH VEEDU,
CHENAPPADI P.O., CHIRAKADAV, KOTTAYAM DISTRICT.

R2 BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE AWARD IN I.D. NO.30/2000 DT.25.6.2003.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 30295 OF 2003

Dated this the 2nd day of April, 2007

JUDGMENT

Petitioner is challenging Ext.P1 award whereunder the Industrial Tribunal has set aside the enquiry report, took evidence and though found second respondent guilty of almost all charges, ordered his reinstatement but without backwages and other benefits. I heard counsel appearing for the petitioner and counsel appearing for the second respondent and I have gone through ext.P1 award.

2. Second respondent was suspended from service and enquiry was conducted for various charges of gross insubordination and indiscipline. Specific allegations against him include use of abusive and filthy language against supervisory staff and colleagues. In the enquiry conducted by advocate appointed by the petitioner, second respondent was found guilty and having regard to the grave nature of charges proved, petitioner dismissed him from service. However, on reference, the Tribunal interfered with the enquiry report and set aside the same for the reason that proper opportunity was not given to the

second respondent to cross-examine witnesses 2 to 4. Even though the case of the petitioner that this finding of the Tribunal is not tenable as second respondent only deliberately dragged the matter, I do not think any interference is called for with the finding of the Tribunal in setting aside the enquiry report because even after setting aside the enquiry report and after taking evidence, the Tribunal itself found the second respondent guilty of several serious charges levelled against him even though all charges were not proved by the petitioner before the Tribunal.

3.The only question therefore to be considered is whether the Tribunal was justified in reducing the punishment from dismissal to reinstatement without backwages. Even though counsel for the second respondent contended that many of the charges have not been proved and the charges proved do not justify the most severe punishment of dismissal, counsel for the petitioner contended that the charges proved are grave enough to justify his dismissal. He has referred to the evidence wherein the filthy and abusive language used by the second respondent against his supervisory staff and colleagues are recorded in

Malayalam. Counsel for the petitioner also relied on the decision of the Supreme Court in Mahindra and Mahindra's case reported in (2005)2 K.L.T. 32 and referred to paragraph 22 wherein the Supreme Court has held that punishment of dismissal for use of abusive language cannot be said to be disproportionate to the gravity of the offence. In this case, the allegations proved against the second respondent are not only use of filthy and abusive language against supervisory staff but he went to the extent of going to enquiry officer's advocate's office and threatened and abused him there. It is pertinent to note that large number of employees and supervisory staff have come forward to give consistent evidence against the second respondent against his gross insubordination and indiscipline in using filthy and abusive language and his coming to the factory when he was affected with chicken pox to the discomfort of all the employees. Normally workers stand as a class and give evidence against a co-worker only under compelling circumstances and when the delinquent is totally unacceptable to them. I feel the reinstatement of the second respondent will have only demoralising effect on the employees in petitioner's company. The

Tribunal in my view has shown undeserving sympathy for the second respondent and there is no justification for his reinstatement. The denial of back wages as a punishment retained by the Tribunal is grossly inadequate. It is to be noted that second respondent is out of service from 1996 onwards and has been getting subsistence allowance until termination. Thereafter under interim orders of this Court he was paid Rs. 87,000/- towards wages under Section 17B of the I.D. Act. I feel even this payment, the second respondent does not deserve and he got it only because the statute provides for it. However, he is free to retain the statutory benefits received by him during the pendency of these proceedings. However, I find no justification to uphold Ext.P1 award. Therefore Ext.P1 is confirmed in regard to findings of guilt, but the reduction in punishment granted by the Tribunal is cancelled and second respondent's dismissal from service by the petitioner is upheld.

W.P. is allowed as above.

(C.N.RAMACHANDRAN NAIR)
Judge